Abdul Manan bin Hassan v Hassan bin Marsom & Ors

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COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO M-01(NCVC)(W)-140–05 OF 2015
TENGKU MAIMUN, ABDUL RAHMAN SEBLI AND ZALEHA YUSOF JJCA
27 SEPTEMBER 2017

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Civil Procedure — Settlement — Agreement — Whether agreement between parties binding — Whether respondents liable to appellant for false imprisonment

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The appellant and one Mohd Hady were remanded for being suspected to be involved in a fight with a policeman. Both the appellant and Mohd Hady brought separate civil suits against the respondents for assault and false imprisonment. Before the commencement of the trial between the appellant and the respondents, it was agreed between them that the decision of the High Court in the Mohd Hady suit ('Mohd Hady suit'), which was heard first, would bind them on the issue of liability for false imprisonment. At the conclusion of the Mohd Hady suit, the trial judge allowed the claim for assault but disallowed his claim for false imprisonment. On appeal, the Court of Appeal overturned the decision of the High Court and allowed Mohd Hady's appeal for false imprisonment. However, in the present case, the learned High Court judge disallowed the appellants claim for false imprisonment. The appellant then appealed to this court.

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Held, allowing the appellant's appeal and setting aside the High Court's decision:

(1) The respondents were estopped from denying liability for the wrongful detention of the appellant as they had agreed to be bound by the courts decision on liability in the Mohd Hady suit. Therefore, although the learned judge was not bound by the decision of the Court of Appeal in the Mohd Hady suit, the parties were bound by the agreement between themselves. Since the respondents in the Mohd Hady suit had been found to be liable for false imprisonment by the court, the respondents were also liable to the appellant for false imprisonment (see paras 15 & 17).

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[Bahasa Malaysia summary

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Perayu dan seorang bernama Mohd Hady ditahan kerana disyaki terlibat dalam pergaduhan dengan seorang anggota polis. Perayu dan Mohd Hady kedua-dua mereka membawa tindakan sivil berasingan terhadap responden-responden bagi serangan dan penahanan salah. Sebelum permulaaan perbicaraan di antara

perayu dan responden-responden, ia dipersetujui di antara mereka bahawa keputusan Mahkamah Tinggi di dalam tindakan Mohd Hady ('tindakan Mohd Hady'), yang mana didengar dahulu, akan mengikat mereka atas isu liabiliti bagi penahanan salah. Di akhir kesimpulan tindakan Mohd Hady, hakim perbicaraan membenarkan tuntutan untuk serangan tetapi tidak membenarkan tuntutannya bagi penahanan salah. Atas rayuan, Mahkamah Rayuan menolak keputusan Mahkamah Tinggi dan membenarkan rayuan Mohd Hady bagi penahanan salah. Walau bagaimanapun, dalam kes ini, hakim Mahkamah Tinggi yang bijaksana tidak membenarkan tuntutan perayu-perayu bagi penahanan salah. Perayu kemudiannya merayu kepada mahkamah ini.

Diputuskan, membenarkan rayuan perayu dan mengetepikan keptusan Mahkamah Tinggi:

(1) Responden-responden diestop daripada menafikan liabiliti bagi penahanan salah terhadap perayu kerana mereka telah bersetuju untuk diikat oleh keputusan mahkamah-mahkamah atas liabiliti dalam tindakan Mohd Hady. Oleh itu, walaupun hakim yang bijaksana tidak terikat dengan keputusan Mahkamah Rayuan dalam tindakan Mohd Hady, pihak-pihak adalah terikat dengan perjanjian di antara mereka. Memandangkan responden-responden di dalam tindakan Mohd Hady telah didapati bertanggungjawab bagi penahanan salah oleh mahkamah, responden-responden juga bertanggungjawab kepada perayu bagi penahanan salah (lihat perenggan 15 & 17).]

Notes

For cases on agreement, see 2(4) *Mallal's Digest* (5th Ed, 2017 Reissue) paras 8809–8811.

Cases referred to

Ketua Polis Daerah Johor Bahru, Johor & Ors v Ngui Tek Choi [2013] 4 MLJ 504; [2013] 4 CLJ 47; [2013] 1 LNS 130, CA (refd)
Tan Geok Lan v La Kuan @ Lian Kuan [2004] 3 MLJ 465, FC (folld)

Appeal from: Civil Suit No 21 NCVC-6–11 of 2011 (High Court, Melaka)

J Amardas (KP Ng & Amardas) for the appellant.
Teh Li Siew (Senior Federal Counsel, Attorney General's Chambers); Yusliza Awal (State Legal Advisor's Office Melaka) for the respondents.

Abdul Rahman Sebli JCA (delivering judgment of the court):

[1] This appeal by the appellant was confined to the issue of liability for false imprisonment. The relevant facts are as follows. In the early hours of

22 November 2008, the appellant and one Mohd Hady were arrested and brought to the Melaka Police Headquarters to assist in police investigation into a fight that took place at Zubaidah Restaurant, MITC Melaka on 21 November 2008 at about 11.45pm.

[2] The fight was between some members of the public and a policeman. The appellant was suspected to be involved in the fight. The information that the police had on the appellant was that he was the gang leader of a secret society code-named 'Geng 77'.

[3] Thereafter the appellant and Mohd Hady were remanded in police custody for a total period of 14 days on the order of a Magistrate. Subsequently they brought separate civil suits against the respondents for assault and false imprisonment.

[4] The appellant alleged that after his arrest, he was blindfolded and subjected to violent physical assault by ten policemen in civilian clothes on the night of 21 November 2008 and in the morning of 22 November 2008, resulting in serious injuries to him. He was in handcuffs when they assaulted him.

[5] Medical evidence showed that the appellant suffered from 'Bilateral periorbital haematoma with right subconjunctival haemorrhage' and 'Acute renal failure secondary to rhabdomyolysis'. An expert medical witness who was called to give evidence at the trial testified that the injuries could result in death if left untreated. That was how serious the injuries were.

[6] Before the commencement of the trial between the appellant and the respondents, it was agreed between them that the decision of the High Court in the Mohd Hady suit, which was heard first, would bind them on the issue of liability for false imprisonment. This is recorded at pp 31–32 of the supplementary appeal record dated 28 November 2014, which we now reproduce for ease of reference:

> P. Plaintif: Kedua-dua pihak ingin memaklumkan Mahkamah bahawa pada 18.9.2013, kedua-dua pihak telah bersetuju bahawa liabiliti dalam kes Mohd Hady, 21NCVC-5-11/2011 di Mahkamah Tinggi Melaka dan Mahkamah Rayuan, M01 (NCVC) (W)-17-01-2014) akan mengikat liabiliti dalam kes ini.
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> Berdasarkan persetujuan awal, kedua-dua pihak ingin memaklumkan bahawa kita akan teruskan kes Manan hanya berhubung dengan kuantum tetapi rakan bijaksana, Peguam Persekutuan akan memelihara haknya berhubung dengan liabiliti, false imprisonment (pemenjaraan salah) di mana mereka akan membuat rayuan kepada Mahkamah Persekutuan.
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> Kedua-dua pihak akan terikat dengan keputusan Mahkamah Persekutuan sekiranya

kebenaran diberi akan terikat, jika tidak diberi, keputusan Mahkamah Rayuan akan mengikat kedua-dua pihak.

Mahkamah: Jika kebenaran diberikan dan keputusan rayuan dibuat.

P. Plaintif: Oleh itu kami akan menumpukan keterangan berdasarkan hanya kuantum sahaja. Yang penting juga, pihak-pihak diberikan kebenaran untuk apply to the Court of Appeal kerana bergantung kepada keputusan Mahkamah Persekutuan.

SFC: Sahkan.

[7] At the conclusion of the trial of the suit brought by Mohd Hady, the learned trial judge allowed his claim for assault but disallowed his claim for false imprisonment. On appeal however, this court overturned the High Court's decision and allowed Mohd Hady's appeal for false imprisonment and maintained the judgment for assault.

[8] This is the decision of this court that is under appeal to the Federal Court and which the parties agreed (para 6 above) they would abide by whichever way the Federal Court were to decide on the issue of false imprisonment. Given this agreement by the parties, and pending the decision of the Federal Court, this court's decision in the Mohd Hady appeal should bind the respondents on the issue of liability for false imprisonment in the suit brought by the appellant.

[9] The learned judge however did not allow the appellant's claim for false imprisonment. He only allowed the appellant's claim for assault and awarded general damages in the sum of RM80,000, in addition to RM50,000 for aggravated damages and another RM50,000 for exemplary damages, making a grand total of RM180,000.

[10] The learned judge gave the following reasons for not awarding damages to the appellant for false imprisonment:

> 6. Bagaimanapun saya tidak akan memberikan apa-apa award untuk penahanan dan penangkapan yang didakwa salah kerana saya dapati dan memutuskan bahawa penangkapan dan penahanan Plaintif oleh pihak polis adalah sah dan mematuhi kehendak undang-undang. Disinilah perbezaanya dengan kes Mohd Hady kerana di sini saya dapati Plaintif sememangnya telah dipanggil untuk tujuan disiasat penglibatannya dalam satu pergaduhan di Restoran Zubaidah, MITC Melaka. Manakala Mohd Hady pula didapati sekadar mengikuti Plaintif sahaja. Namun begitu, saya telah memutuskan Mohd Hady masih tidak layak untuk mendapat pengisytiharan dan tuntutan atas dasar penahanan salah yang didakwanya.

[11] The basis for the reasoning was that since the remand order was issued by a Magistrate, any police officer acting in obedience to such order was immune from liability for the appellant's detention, citing the decision of this

court in *Ketua Polis Daerah Johor Bahru, Johor & Ors v Ngui Tek Choi* [2013] 4 MLJ 504; [2013] 4 CLJ 47; [2013] 1 LNS 130. A

[12] The learned judge was aware that his decision to disallow Mohd Hady's claim for false imprisonment was reversed by this court, but distinguished the facts from the facts of the appellant's case. We reproduce below what the learned judge said: B

> 7. Walaupun saya difahamkan keputusan saya berkenaan penahanan salah dalam kes Mohd Hady telah diketepikan oleh Mahkamah Rayuan, saya masih berpendapat bahawa kedudukan Mohd Hady jauh berbeza dengan kes plaintif di sini. Dengan itu, saya memutuskan plaintif tidak layak diberikan apa-apa pampasan ganti rugi bagi penahanan tersebut. C

[13] It was against this decision that the appellant filed the present appeal before us. After hearing arguments by both sides, we unanimously allowed the appellant's appeal and set aside the High Court's decision. These briefly are our grounds for allowing the appeal. D

[14] The appellant's contention was that the learned judge was wrong in disallowing his claim for false imprisonment as parties had agreed on the issue of liability for false imprisonment. Reliance was placed on the Federal Court case of *Tan Geok Lan v La Kuan @ Lian Kuan* [2004] 3 MLJ 465 where it was held at p 474: E

> With due respect, we do not agree because to our mind, *if the parties had chosen and agreed as to the manner of resolving the dispute between them they will have to bear with whatever is the outcome*. The threshold question is whether there was a binding agreement between the parties to settle the dispute in that manner? For the answer to this question, the learned trial judge will have to conduct the proceedings as aforesaid. And if the agreement is found to be binding, the dispute can be solved in the manner as agreed to by the parties and the case can be disposed of expeditiously; thus, saving time and costs. (Emphasis added.) F G

[15] This decision binds us. We were therefore constrained to agree with learned counsel for the appellant that the learned judge was wrong in disallowing the appellant's claim for damages for false imprisonment. Having agreed to be bound by the court's decision on liability in the Mohd Hady suit, the respondents are estopped from denying liability for the wrongful detention of the appellant. Thus, although the learned judge was not bound by the decision of this court in the Mohd Hady case on the issue of liability for false imprisonment, the parties are bound by the agreement between themselves. H I

[16] The respondents cannot approbate and reprobate, nor can they choose to accept the court's decision only if it favoured them. That will be an abuse of process. Their agreement to be bound by the court's decision on liability for

false imprisonment in the Mohd Hady case must override and supersede their pleaded defence that the appellant's detention was lawful, unless it could be shown that the agreement was repugnant to any law, which they failed to do.

[17] Since the respondents in the Mohd Hady suit had been found to be liable for false imprisonment by this court, it must follow, until the decision is reversed by the Federal Court, that the respondents are also liable to the appellant for false imprisonment. They agreed to be bound by the decision and they must abide by it.

Appellant's appeal allowed; High Court's decision set aside.

Reported by Fatin Mohd Ismail